



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,203	02/03/2006	Alfred Hohener	HF/15-22936/A/PCT	9432
324 7590 12/21/2009 JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591				
EXAMINER AHVAZI, BIAN				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
12/21/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

andrea.dececchis@ciba.com  
deborah.pinori@ciba.com  
sonny.nkansa@basf.com

### Office Action Summary

**Application No.**

10/567,203

**Applicant(s)**

HOHENER, ALFRED

**Examiner**

BIJAN AHVAZI

**Art Unit**

1796

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 6-16 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6-12 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This action is responsive to the amendment filed on October 26, 2009.
2. Claims 1, 6-12, 16 are pending. Claims 1, 6-9, 11 and 13 are amended. Claims 2-5 are canceled. Claims 13-15 are previously are withdrawn from further consideration.
3. The rejection of claims 9 and 11 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn in view of the Applicants' amendment.
4. Claims 1, 6-12, 16 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 10-19, 21 and 22 of the copending Application No. (US 11/661,174) in view of Alan David Willey (Pat. No. US 5,916,481).
5. The rejection of claims 1-12 and 16 is withdrawn in view of the Applicants' amendment.

### *Claim Rejections - 35 USC § 112*

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:  

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
7. Claims 1, 6-12, 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation " $\text{--SO}_3\text{--Y}_3$ " in independent claim 1, formula (4), line 3, is nowhere supported in the specification and is therefore considered as new matter. Claims 6-12, and 16 are being depended on claim 1 are rejected as well.

8. Newly submitted claim 1 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: With regard to elected species, the applicant elects the photo catalyst of formula (1b) in the previous Office action. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 1 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1, 6-12 and 16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 10-19, 21 and 22 of the copending Application No. (US 11/661,174) in view of Alan David Willey (Pat. No. US 5,916,481). Although the preambles are different, and the conflicting claims are not identical; they are not patentably distinct from each other because the present claims indicated above also cover compositions which overlap with the claims of the copending applications above,

and thus, render the present claims *prima facie* obvious. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the colored granular composition by the copending Application so as to include fluorescent whitening agent (FWA) in as taught by Alan David Willey with reasonable expectation that this would result in a bright, neutral white shade, even after repeated wash with outstanding light fastness stability and attractive environmental profile due to its good abiotic/biotic degradation. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to arrive at the same inventive composition because the disclosure of the inventive subject matter appears within generic disclosure with the combination of the prior art as taught by Alan David Willey (Col. 45, line 12).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1, 6, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonelli *et al.* (Pub. No. US 2003/0087791 A1) in view of Adolf Kaser (Pat. No. US 5,211,719) and James Stanley Campbell (Pat. No. US 5,853,929).

Regarding claim 1, Bonelli *et al.* teach a coloured granular composition for use as speckles in a particulate laundry detergent composition comprising photobleach (read on

photocatalyst, Page 1, ¶0001) which is a mixture of zinc and aluminium phthalocyanine sulphonate (Page 5, ¶0089). Other ingredients that is present include solvents, hydrotropes, fluorescers, dyes (read on dyestuff), foam boosters or foam controllers (antifoams) as appropriate, fabric conditioning compounds and perfumes (Page 4, ¶0074). Bonelli *et al.* do not expressly teach the composition comprises at least one azo dyestuff and/or at least one triphenylmethane dyestuff, which produce a relative hue angle of 220 - 320° and wherein the dyestuff component is degraded when the composition is exposed to sunlight and further the dyestuff component is degraded at the rate of at least 1% per 2.

However, Adolf Kaser teaches a liquid formulation of anionic disazo dyes that can be used for a continuous or batchwise dyeing process for textile materials, in particular cellulose (Col. 3, lines 6-9) wherein concentrated aqueous solutions of anionic disazo dyes (read on azo dyestuff), comprising salts of anionic dyes of the formula as set forth (Col. 1, lines 10-15). It is held that "Products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art such as the combination of Bonelli *et al.* and Adolf Kaser teach the identical chemical structure (i.e. a blend of zinc and aluminium phthalocyanine sulphonate and azo dyestuff), the properties applicant (i.e. the dyestuff component is degraded at the rate of at least 1% per 2 hours when the composition is exposed to sunlight) discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir.1990). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the colored granular composition by Bonelli *et al.* so as to include anionic disazo dyes as taught by Adolf Kaser with reasonable expectation that this would result in a wide gamut of shade in conjunction with other

dyestuff and improved properties such as avoiding a coloration of the fabric as taught by Adolf Kaser (Col. 3, lines 6-9).

Neither Bonelli *et al.* nor Adolf Kaser disclose a relative hue angle of 220 - 320°. James Stanley Campbell teaches a colored toner (Col. 1, lines 9) containing a solvent-soluble metal phthalocyanine blue dyestuff and a trichromatic set of toners (Col. 1, lines 11-13) with a relative hue angle of 220 - 320° (Col. 7, lines 1-9, Table 1), since these dyestuff provides a wide gamut of shade in conjunction with other dyestuff (Col. 5, lines 57-59). Moreover, these dyestuff possess the required characteristics of stability to the processing conditions encountered on formulation or the required stability and fastness when applied to a substrate (i.e textile material) and disposition in color space to provide for a wide and useful gamut of shades from a small number of colorants (Col. 1, lines 29-34). Since James Stanley Campbell teaches the homologues dyestuff, thus characteristics such as the hue angle normally possessed by members of homologous series are principally the same. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the colored granular composition by Bonelli *et al.* so as to include anionic disazo dyes as taught by Adolf Kaser in view of a relative hue angle by James Stanley Campbell with reasonable expectation that this would result in improved properties such as avoiding a coloration of the fabric, improved light fastness stability as taught by James Stanley Campbell (Col. 1, lines 29-30).

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the colored granular composition by Bonelli *et al.* with anionic disazo dyes as taught by Adolf Kaser having a relative hue angle by James Stanley Campbell in order to provide a need for novel reactive dyestuffs which have improved

properties, not only in respect of the light fastness stability, and in particular exhibit a high degree of fixing on the material to be dyed and yield strong dyeings.

Regarding claim 6, Bonelli *et al.* disclose the features as discussed above. However, Bonelli *et al.* do not expressly disclose the composition wherein the azo dyestuff is a compound of formula as set forth.

However, Adolf Kaser teaches a liquid formulation of anionic disazo dyes can likewise be used for a continuous or batchwise dyeing process for textile materials, in particular cellulose (Col. 3, lines 6-9) wherein concentrated aqueous solutions of anionic disazo dyes (read on azo dyestuff), comprising salts of anionic dyes of the formula as set forth (Col. 1, lines 10-15). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the colored granular composition by Bonelli *et al.* so as to include anionic disazo dyes as taught by Adolf Kaser with reasonable expectation that this would result in a wide gamut of shade in conjunction with other dyestuff and improved properties such as avoiding a coloration of the fabric as taught by Adolf Kaser (Col. 3, lines 6-9).

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the colored granular composition by Bonelli *et al.* with anionic disazo dyes as taught by Adolf Kaser in order to provide a need for novel reactive dyestuffs which have improved properties, not only in respect of the light fastness stability, and in particular exhibit a high degree of fixing on the material to be dyed and yield strong dyeings.

Regarding claim 10, Bonelli *et al.* teach a coloured granular formulation comprising a composition for use as speckles in a particulate laundry detergent composition comprising



photobleach (read on photocatalyst, Page 1, ¶0001, i.e. a mixture of zinc and aluminium phthalocyanine sulphonate Page 5, ¶0089). Other ingredients that can be present include solvents, hydrotropes, fluorescers, dyes, foam boosters or foam controllers (antifoams) as appropriate; fabric conditioning compounds (Page 4, ¶0074).

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over over Bonelli *et al.* (Pub. No. US 2003/0087791 A1) in view of Adolf Kaser (Pat. No. US 5,211,719) and James Stanley Campbell (Pat. No. US 5,853,929) as applied to claims 1, 6 and 10 above, and further in view of Abel *et al.* (Pat. No. US 4,405,329).

Regarding claim 7, Bonelli *et al.*, Adolf Kaser and James Stanley Campbell disclose the features as discussed above. Bonelli *et al.*, Adolf Kaser and James Stanley Campbell do not expressly teach the composition comprises the azo dyestuff is a compound of formula as set forth.

However, Abel *et al.* teach concentrated fluid formulations of textile dyes, leather dyes or paper dyes comprising metal-free dyes of the formula (103) as shown in Example 4 (Col. 13, lines 17-33) as the recited claimed. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the colored granular composition by Bonelli *et al.* in view of anionic disazo dyes by Adolf Kaser so as to include specific azo dyestuff (i.e. interchangeable dyestuff) as taught by Abel *et al.* with reasonable expectation that this would result in a wide gamut of shade in conjunction with other dyestuff and improved properties such as avoiding a coloration of the fabric as taught by Adolf Kaser (Col. 3, lines 6-9) and Abel *et al.* (Col. 13, lines 17-33). It is noted that the substitution of equivalents such the azo dyestuff

requires no express motivation as long as the prior art by Abel *et al.* (Col. 13, lines 17-33) recognizes the equivalency.

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the colored granular composition by Bonelli *et al.* in view of anionic disazo dyes by Adolf Kaser and a relative hue angle by James Stanley Campbell with specific azo dyestuff (i.e interchangeable dyestuff) as taught by Abel *et al.* in order to provide a need for novel reactive dyestuffs which have improved properties, not only in respect of the fastnesses, and in particular exhibit a high degree of fixing on the material to be dyed and yield strong dyeings.

14. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bonelli *et al.* (Pub. No. US 2003/0087791 A1) in view of Adolf Kaser (Pat. No. US 5,211,719) and James Stanley Campbell (Pat. No. US 5,853,929) as applied to claims 1, 6 and 10 above, and further in view of Kenji Matsumoto (JP 62025171, abstract STN translation, Page 50).

Regarding claim 8, Bonelli *et al.*, Adolf Kaser and James Stanley Campbell disclose the features as discussed above. Bonelli *et al.*, Adolf Kaser and James Stanley Campbell do not expressly disclose the composition comprises the triphenylmethane dyestuff is a compound of formula as set forth.

However, Kenji Matsumoto teaches dye compounds for relief patterns for microcolor filters contain triphenylmethane blue dyes and phthalocyanine blue dyes (Page 50, lines 1-2) since such dyes are used to overcome the undesirable yellowing of white fabrics or white filters, and similar discoloration of other light colored fabrics or filters, some products include a hueing or bluing dye which attaches to fabric or filter during the wash and/or rinse cycle. At the time of

the invention, it would have been obvious to a person of ordinary skill in the art to modify the colored granular composition by Bonelli *et al.* in view of anionic disazo dyes by Adolf Kaser so as to include specific azo dyestuff (i.e interchangeable dyestuff) as taught by Kenji Matsumoto with reasonable expectation that this would result in a wide gamut of shade in conjunction with other dyestuff and improved properties such as avoiding a coloration of the fabric as taught by Adolf Kaser (Col. 3, lines 6-9) and Kenji Matsumoto (Page 50, lines 1-2). It is noted that the substitution of equivalents such the triphenylmethane dyestuff for azo dyestuff requires no express motivation as long as the prior art by Kenji Matsumoto recognizes the equivalency.

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the colored granular composition by Bonelli *et al.* in view of anionic disazo dyes by Adolf Kaser a relative hue angle by James Stanley Campbell with the triphenylmethane dyestuff (i.e interchangeable dyestuff) as taught by Kenji Matsumoto in order to provide a need for novel reactive dyestuffs which have improved properties, not only in respect of the fastnesses, and in particular exhibit a high degree of fixing on the material to be dyed and yield strong dyeings.

15. Claims 9, 11, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonelli *et al.* (Pub. No. US 2003/0087791 A1) in view of Adolf Kaser (Pat. No. US 5,211,719) and James Stanley Campbell (Pat. No. US 5,853,929) as applied to claims 1, 6, and 10 above, and further in view of Alan David Willey (Pat. No. US 5,916,481).

Regarding claim 9, Bonelli *et al.*, Adolf Kaser and James Stanley Campbell disclose the features as discussed above. Bonelli *et al.*, Adolf Kaser and James Stanley Campbell do not expressly disclose the composition comprises at least one fluorescent whitening agent.

However, Alan David Willey teaches a laundry or cleaning composition comprising Tinopal CBS-X, fluorescent whitening agent (FWA) (Ciba Company) as shown in Example 39 (Col. 45, line 12). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the colored granular composition by Bonelli *et al.* in view of anionic disazo dyes as by Adolf Kaser so as to include fluorescent whitening agent (FWA) as taught by Alan David Willey with reasonable expectation that this would result in significant improvement of the visual appearance of white washing powders as taught by Alan David Willey (Col. 1, lines 12-14).

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the colored granular composition by Bonelli *et al.* in view of anionic disazo dyes by Adolf Kaser a relative hue angle by James Stanley Campbell with fluorescent whitening agent (FWA) as taught by Alan David Willey in order to provide a bright, neutral white shade, even after repeated wash with outstanding light fastness stability and attractive environmental profile due to its good abiotic/biotic degradation.

Regarding claim 11, Bonelli *et al.* a colored granular composition for use as speckles in a particulate laundry detergent composition (Page 5, ¶0097), wherein the formulations shown in Table 4 represent detergent compositions comprising 2.00 wt % of photobleach speckles of Example 1 (Page 5, ¶0098) including a blend of Zn and Al sulphonated phthalocyanine and blue colorant (Col. 4, ¶0079, Table 1) and at least one further additive from 10 to 95 wt % and 9.8 to 16 wt% water (Page 5, ¶0098).

Regarding claims 12 and 16, Bonelli *et al.* in view of Adolf Kaser and James Stanley Campbell disclose the features as discussed above. Bonelli *et al.*, Adolf Kaser and James

Stanley Campbell do not expressly disclose a liquid formulation comprising the composition and the textile material treated with the composition.

However, Alan David Willey teaches a laundry or cleaning composition wherein the cleaning compositions provided may be in the form of granules, liquids, bars, and the like, and typically are formulated to provide an in-use pH in the range of 9 to 11, however in the case of non-aqueous or low aqueous compositions the pH ranges may vary outside this range as shown in Example 39 (Col. 44, lines 48-53). Alan David Willey discloses organosilicon photosensitizing compounds having a Q-band maximum absorption wavelength of 660 nanometers or greater and their use as photoactivators (photosensitizer) or singlet oxygen producers, in particular for low hue photobleaching for removing stains from textiles and hard surfaces (Col. 1, lines 8-13). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the colored granular composition by Bonelli *et al.* in view of anionic disazo dyes as by Adolf Kaser so as to include composition as a liquid formulation to treat textile material as taught by Alan David Willey with reasonable expectation that this would result in significant improvement of the visual appearance (Col. 1, lines 12-14).

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the colored granular composition by Bonelli *et al.* in view of anionic disazo dyes by Adolf Kaser a relative hue angle by James Stanley Campbell with composition as a liquid formulation to treat textile material as taught by Alan David Willey in order to provide a bright, neutral white shade, even after repeated wash with outstanding light fastness stability and attractive environmental profile due to its good abiotic/biotic degradation.

***Response to Arguments***

16. Applicant's arguments with respect to claims 1, 6-12, 16 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that James Stanley Campbell is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.1992). In this case, James Stanley Campbell teaches a colored toner (Col. 1, lines 9) containing a solvent-soluble metal phthalocyanine blue dyestuff and a trichromatic set of toners (Col. 1, lines 11-13) with a relative hue angle of 220 - 320° (Col. 7, lines 1-9, Table 1), since these dyestuff provides a wide gamut of shade in conjunction with other dyestuff (Col. 5, lines 57-59). Moreover, these dyestuff possess the required characteristics of stability to the processing conditions encountered on formulation or the required stability and fastness when applied to a substrate (i.e. textile material) and disposition in color space to provide for a wide and useful gamut of shades from a small number of colorants (Col. 1, lines 29-34). Since James Stanley Campbell teaches the homologues dyestuff, thus characteristics such as the hue angle normally possessed by members of homologous series are principally the same.

The applicant argues that the recited combination of the references do not provide any motivation to prepare the present composition with any expectation of success.

The examiner respectfully disagrees. It is held that "Products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its

properties are inseparable. Therefore, if the prior art such as the combination of the references such as Bonelli *et al.* and Adolf Kaser teach the identical chemical structure (i.e. a blend of zinc and aluminium phthalocyanine sulphonate and azo dyestuff), the properties applicant (i.e. the dyestuff component is degraded at the rate of at least 1% per 2 hours when the composition is exposed to sunlight) discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir.1990). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the colored granular composition by Bonelli *et al.* so as to include anionic disazo dyes as taught by Adolf Kaser with reasonable expectation that this would result in a wide gamut of shade in conjunction with other dyestuff and improved properties such as avoiding a coloration of the fabric as taught by Adolf Kaser (Col. 3, lines 6-9).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, at the time of the invention, it would have been obvious to a person of

ordinary skill in the art to modify the colored granular composition by Bonelli *et al.* so as to include anionic disazo dyes as taught by Adolf Kaser in view of a relative hue angle by James Stanley Campbell with reasonable expectation that this would result in improved properties such as avoiding a coloration of the fabric, improved light fastness stability.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

#### ***Examiner Information***

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bijan Ahvazi, Ph.D. whose telephone number is (571)270-3449. The examiner can normally be reached on M-F 8:0-5:0. (Off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information



Art Unit: 1796

regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BA/  
Bijan Ahvazi,  
Examiner  
Art Unit 1796

/Harold Y Pyon/  
Supervisory Patent Examiner, Art Unit 1796

11/04/2009